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FILED

MAY 13 2011

Board of Vocational Nursing
and Psychiatric Technicians

9 **BEFORE THE**
10 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. VN-2010-737

14 **TOSHA JOYCE BURKE**
16950 Jasmine Street, #118
Victorville, CA 92395

A C C U S A T I O N

15 Vocational Nurse License No. VN 250335

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely
21 in her official capacity as the Executive Officer of the Board of Vocational Nursing and
22 Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about June 1, 2010, the Board of Vocational Nursing and Psychiatric
24 Technicians ("Board") issued Vocational Nurse License No. VN 250335 to Tosha Joyce Burke
25 ("Respondent"). The Vocational Nurse License was in full force and effect at all times relevant
26 to the charges brought herein and will expire on August 31, 2011, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
4 indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 118, subdivision (b), provides, in pertinent part, that the expiration of a
7 license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the
8 period within which the license may be renewed, restored, reissued or reinstated. Under section
9 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after
10 the expiration.

11 5. Section 490 states, in pertinent part:

12 "(a) In addition to any other action that a board is permitted to take against a licensee, a
13 board may suspend or revoke a license on the ground that the licensee has been convicted of a
14 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
15 or profession for which the license was issued.

16 (b) Notwithstanding any other provision of law, a board may exercise any authority to
17 discipline a licensee for conviction of a crime that is independent of the authority granted under
18 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
19 of the business or profession for which the licensee's license was issued.

20 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
21 conviction following a plea of nolo contendere. Any action that a board is permitted to take
22 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
23 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
24 made suspending the imposition of sentence, irrespective of a subsequent order under the
25 provisions of Section 1203.4 of the Penal Code."

26 6. Section 2875 provides, in pertinent part, that the Board may discipline the holder of a
27 vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of
28 the Vocational Nursing Practice Act.

1 7. Section 2878 states:

2 "The Board may suspend or revoke a license issued under this chapter [the Vocational
3 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the following:

5

6 (d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
7 violating of, or conspiring to violate any provision or term of this chapter.

8

9 (f) Conviction of a crime substantially related to the qualifications, functions, and duties
10 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive
11 evidence of the conviction..."

12 8. Section 2878.5 states:

13 "In addition to other acts constituting unprofessional conduct within the meaning of this
14 chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed
15 under this chapter to do any of the following:

16 . . .

17 (b) Use any controlled substance as defined in Division 10 of the Health and Safety
18 Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in
19 a manner dangerous or injurious to himself or herself, any other person, or the public, or to the
20 extent that the use impairs his or her ability to conduct with safety to the public the practice
21 authorized by his or her license.

22 (c) Be convicted of a criminal offense involving possession of any narcotic or dangerous
23 drug, or the prescription, consumption, or self-administration of any of the substances described
24 in subdivisions (a) and (b) of this section, in which event the record of the conviction is
25 conclusive evidence thereof.

26 (d) Be committed or confined by a court of competent jurisdiction for intemperate use of or
27 addiction to the use of any of the substances described in subdivisions (a) and (b) of this section,
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1 in which event the court order of commitment or confinement is prima facie evidence of that
2 commitment or confinement..."

3 9. Section 2878.6 states:

4 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
5 charge substantially related to the qualifications, functions and duties of a licensed vocational
6 nurse is deemed to be a conviction within the meaning of this article. The board may order the
7 license suspended or revoked, or may decline to issue a license, when the time for appeal has
8 elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting
9 probation is made suspending the imposition of sentence, irrespective of a subsequent order under
10 the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of
11 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
12 accusation, information or indictment."

13 **REGULATORY PROVISIONS**

14 10. California Code of Regulations, title 16, section 2521, states:

15 "For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
16 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
17 considered to be substantially related to the qualifications, functions or duties of a licensed
18 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed
19 vocational nurse to perform the functions authorized by his license in a manner consistent with
20 the public health, safety, or welfare. . . ."

21 **COST RECOVERY**

22 11. Section 125.3 provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licensee found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

26 **FIRST CAUSE FOR DISCIPLINE**

27 **(Convictions of Substantially-Related Crimes)**

28 12. Respondent is subject to disciplinary action under sections 490, and 2878, subdivision

(f), and section 2878.6, in conjunction with California Code of Regulations, title 16, section 2521, in that Respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a vocational nurse as follows:

a. On or about June 4, 2010, in a criminal proceeding entitled *The People of the State of California v. Tosha Joyce Burke* (Super. Ct. San Bernardino County, 2010, No. TV11000329), Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23103, reckless driving, and she was sentenced pursuant to Vehicle Code section 23103.5, because the reckless driving was alcohol related. The Court sentenced Respondent to 30 days in jail, placed her on 36 months probation, ordered her to attend and complete wet reckless program, complete a work release program, and fined her. The circumstances surrounding the conviction are that on or about December 22, 2009, a deputy with the Hesperia Sheriff's Department pulled Respondent over for driving too close to the right hand curb almost hitting the curb several times. Respondent was given a series of field sobriety tests which she failed to complete satisfactorily. Respondent was given an alcohol breath test, with a result of .109% BAC.

b. On or about November 16, 2009, in a criminal proceeding entitled *The People of the State of California v. Tosha Joyce Burke* (Super. Ct. San Bernardino County, 2009, No. TV1900133), Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b), driving a vehicle while having 0.08% and more, by weight, of alcohol in blood. The Court sentenced Respondent to 1 day in jail, placed her on 36 months probation, and fined her. The circumstances surrounding the conviction are that on or about August 17, 2008, officer with the Victorville California Highway Patrol Unit pulled Respondent over for driving over the speed limit. The Officers smelled the odor of an alcoholic beverage emitting from Respondent's vehicle, observed Respondent to have slow, slurred speech, and glassy eyes. Respondent admitted to officers to having, "a couple of drinks." Respondent agreed to a series of field sobriety tests which she failed to complete satisfactorily. Respondent was subsequently given two alcohol breath tests, with results of 0.19% BAC and 0.19% BAC.

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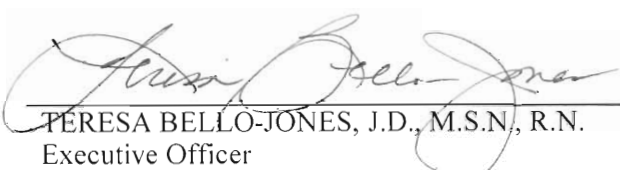
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1 1. Revoking or suspending Vocational Nurse License No. VN 250335, issued to Tosha
2 Joyce Burke;

3 2. Ordering Tosha Joyce Burke to pay the Board the reasonable costs of the
4 investigation and enforcement of this case, pursuant to Business and Professions Code section
5 125.3;

6 3. Taking such other and further action as deemed necessary and proper.

7
8 DATED: May 13, 2011.


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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